IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 18005 of 2004

Between:

Smt. Manjula, W/o. Loya Dasu,
Buragam Village, Srikakulam District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Srikakulam.
2 The Government of Andhra Pradesh, Rep. by its Chief Secretary,
Secretariat Buildings, Hyderabad.
3 The Superintendent, District Jail,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the reasons stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Habeas Corpus directing the respondent to produce Sri Loya Dasu who is detained in Central Jail at Visakahaptnam before this Hon'ble Court and he may be released forthwith after declaring his detention is illegal and void.

Counsel for the Petitioner: MR.S.RAM BABU

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

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ORAL ORDER: (By GB.J.)

The Writ Petition is filed seeking Writ of Habeas Corpus directing the respondents to produce the detenu-Loya Dasu before this Court and to release him forthwith after holding that his detention is illegal and void.

2. The detenu was detained by virtue of the orders passed by the Collector and District Magistrate, Srikakulam-1st respondent in proceedings Rc.No.948/2004/B4, dated 21.8.2004 on the ground that the detenu was a bootlegger falling within the definition of Section 2(b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/86). In support of the detention order, the following grounds were furnished:

1. P.R.No.87/2003-04, dt.16.6.2002

> On 16.6.2002 at about 5.00 PM during the raids conducted in the limits of Buragam village that a person has been arrested along with 2 lts. Of ID liquor and on investigation it revealed that the ID liquor has been purchased from you. Thus the case has been registered against you along with another person vide P.R.No.87/2002-2003, dt.16.6.2002 U/s.7(a) and r/w 8(c) of A.P.P. Act. The sample was sent to Chemical Examiner, Visakhapatnam and reported as ID liquor vide CE.No.485/2002 with Sl.No.5331. Hence, filed charge sheet against you in Judicial First Class Magistrate Court, Sompeta.

2. P.R.No.243/2003-04, dated 20.10.2003.

> On 20.10.2003 at about 8.00 AM during the Route Watch conducted by the Proh. & Excise Inspector, Sompeta at Buragam village found you with 20 lts. Of ID liquor and the property was seized and arrested you under the cover of Occurrence Report and the case was registered in PR.No.243/2003-2004, dated 20.10.2003 U/s. 8© r/w. 7(a) of A.P.P. Act. The samples were sent to the Chemical Examiner, Visakhapatnam, who opined as ID

liquor vide CS.No.908/2003 Sl.No.10861 and 10862 and hence filed charge sheet against you.

3. PR.No.242/2002/03, dated 13.10.2002.

On 13.10.2002 of about 4.00 PM the Proh. & Excise Sub-Inspector, Sompeta along with staff found you in the Buragam village limits while conducting Route Watch with 40 lts. Of ID liquor. Thus the contraband has been seized and arrested under cover of Occurrence Report and registered the case in PR.No.242/2002-2003, dt. 13.10.2002 u/s. 7(a) r/w 8(a) of A.P.P. Act. The sample was sent to the Chemical Examiner, Visakhapatnam, the Chemical Examiner report in his Report No.847/2002 with Sl.No.9410 and 9411 opined that it is ID liquor. Thus filed charge sheet in Judicial First Class Magistrate Court, Sompeta.

4. PR.No.122/2004-05, dt.2.8.2004.

On 2.8.2002 at about 6.30 PM, the Proh. & Excise Sub-Inspector, Sompeta, along with staff while conducting Route Watch in the village limits of Buragam found you with 10 lts of ID liquor. The contraband seized, and you have been arrested and the case has been registered in PR.No.122/2004-05, dt.2.8.2004 U/s. 7(a) r/w 8(c) of A.P.P. Act and the sample sent to the Chemical Examiner, Visakhapatnam. The Chemical Examiner, Visakhapatnam reported that this ID Liquor not fit for human consumption and injurious to health and the case is under investigation".

3. It is the contention of the learned counsel for the detenu that ground No.1 is a stale ground and the time lag between first and second grounds is more than one year four months and on this ground alone the detention order is liable to be set aside. It is also contended by him that permissible limits of acidity and fusel oil was not mentioned and in the absence of which, it could not be said that it is unfit for human consumption. He also raised some more grounds relating to *mala fides*.

4. On the other hand the learned Advocate General submits that the order passed by the detaining authority is quite legal and valid and there are no grounds to interfere with it.

5. We have heard the learned counsel for both sides.

6. Without going into the grounds mentioned, we find from the report of the Chemical Examiner that the test for Iodoform : Positive, Test for Acidity :

Positive and Test for Fusel Oil : Positive, but, however, the permissible limits of the fusel oil and its necessity was not mentioned. This aspect was considered by a Division Bench of this Court in BOYA CHINNA SUBBARAYUDU vs. THE COLLECTOR AND DISTRICT MAGISTRATE, KURNOOL AND OTHERS[1] wherein it was held that failure to mention the permissible limits of fusel oil and its necessity would vitiate the entire detention order and this order was followed by a subsequent Division Bench in SMT.E.NOOKARATNAM, NELLORE vs. COLLECTOR AND DISTRICT MAGISTRATE, NELLORE AND OTHERS[2] and also this Court in Writ Petition No.12534 of 2004, dated 26.10.2004 and Writ Petition No.17941 of 2004, dated 27.10.2004. Thus, we find that on this ground alone the detention order is not sustainable in law and accordingly it is set aside.

7. In the result, the Writ Petition is allowed and detention order passed by the 1st respondent-Collector and District Magistrate, Srikakulam, in Rc.No.948/2004/B4, dated 21.8.2004 is hereby quashed and the detenu-Loya Dasu shall be set at liberty forthwith, if he is not required in any other case.

(G.BIKSHAPATHY, J.)

11th November, 2004.

(CH.S.R.K.PRASAD, J.)

SSR

The Hon'ble Sri Justice G.Bikshapathy (for His Lordship's kind perusal).

To

1 The Collector and District Magistrate, Srikakulam.
2 Chief Secretary, Government of Andhra Pradesh,
Secretariat Buildings, Hyderabad.
3 The Superintendent, District Jail,
Visakhapatnam.

4 2 CCs to the learned Advocate General, High Court of A.P.

5 2CD copies